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# IN THE SUPREME COURT OF THE UNITED STATES

APRIL TERM, 1905.

BOARD OF TRADE OF THE CITY OF CHICAGO,
*Petitioner,*
vs.
CHRISTIE GRAIN & STOCK COMPANY, ET AL,
*Respondents.*

No. 224.

Certiorari of the United States Circuit Court of Appeals, Eighth Circuit.

## BRIEF OF RESPONDENT.


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CHARLES S. CRYSLER,
CLIFFORD HISTED,
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## BRIEF OF RESPONDENT.

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### STATEMENT.

This case comes to this Court from the United States Court of Appeals for the Eighth Circuit, in obedience to a writ of certiorari issued by this court to said Circuit Court of Appeals, directing it to send up for review the record and proceedings in this case.

The action was a proceeding for injunction brought by the Board of Trade of the City of Chicago, against the Christie Grain

& Stock Company, in the United States Circuit Court, at Kansas City, Western Division of the Western District of Missouri. That Court rendered a decree upon the temporary hearing, and granted a temporary writ of injunction against the Christie Grain & Stock Company. From that decree the Grain Company appealed to the United States Circuit Court of Appeals, Eighth Circuit. That Court declined to hear the cause until a final decree should be rendered and the whole record brought to that court. The case was afterwards tried upon the evidence, which was in fact the same evidence submitted on the temporary hearing, and a final decree entered against the Grain Company, and a perpetual injunction ordered. An appeal was then taken from that final decree to the United States Circuit Court of Appeals, and the whole proceeding was then before the Court.

That Court, after a full argument of the case, reversed the decision of the lower court and ordered the bill of the Board of Trade to be dismissed on its merits. The Board of Trade then applied to this Court for a writ of certiorari, and the same was granted and the cause is now here for a full consideration, the title of the case in this Court now being the same as it was when the cause was originally instituted in the United States Circuit Court at Kansas City.

On behalf of the Respondent we have caused to be filed with the Clerk of this Court twenty-five copies of the briefs upon which the cause was heard by the United States Circuit Court of Appeals, and beg to submit this additional brief, which in no way, however, supersedes the original briefs, but is additional thereto only, and we shall refrain from discussing anew the same questions that we have discussed in original briefs, and confine ourselves to answering such points as are suggested by the petitioner's new brief, filed in this Court.

We are not advised whether the counsel for the Board of Trade, petitioner herein, has refiled his original briefs in this court, that were presented to the Court of Appeals, but he has presented a new brief which seems to discuss a great many of the questions discussed in the original briefs, and it is to this brief of petitioner filed in this Court that we desire to direct attention.

I

Counsel for petitioner, in the opening statement of his brief, says:

"The general question in this case is whether a commercial exchange like the Board of Trade may enjoin the theft of its market quotations, while permitting a limited distribution thereof."

This statement is remarkable and unique in view of the record. We had supposed that the questions involved in this case, might be properly stated to be, as follows:

1st. Can the Board of Trade, confessed under its own showing to be engaged in conducting the "bucket shop" business, and gambling in violation of the laws of the State of Illinois where it is located, and contrary to the laws of the State of Missouri in which it seeks its equitable relief, be permitted to enjoy a monopoly in the gambling business?

2d. Whatever its business may be styled, or found in fact to be, the next question that arises is whether it can be permitted to enter into the two contracts with the telegraph company in violation of the Sherman act, to monopolize the trade or commerce among the several states and to restrain trade and commerce.

3d. And another question is whether its course of conduct with reference to the quotations in question, even though they are not made in violation of law, and even though it is not in an unlawful combination with the telegraph companies in restraint of trade, has been of such character as to impress them with a quasi public character to such an extent that it cannot seek to deprive the public of them, as decided by the Supreme Court of its own state, in the case 127 Ill., 153: *N. Y. & Chicago Grain & Stock Exchange* v. *Board of Trade of Chicago.*

4th. We also suppose that another important question in this case would probably be the one upon which the United States Circuit Court of Appeals decided this case against the Board of Trade, to-wit: That it comes into a Court of equity with unclean hands, with reference to the particular quotations it seeks to enjoin respondent from using.

5th. And another question as to whether waiving all of the questions heretofore suggested, the Board of Trade can have or does have a property interest in the quotations in question.

These questions we have suggested, are thoroughly covered in our briefs in the Circuit Court of Appeals, and filed herewith, and it is not now our purpose, by this additional brief, to again re-discuss those questions. And we respectfully invite the Court's attention to the consideration of those briefs prior to any examination of this one.

It will be noticed that counsel for petitioner, on page 2 of his brief, undertakes to inform the Court as to what a "bucket shop" is, when he says:

"A 'bucket shop' is a place where its proprietor posts upon a blackboard market quotations of one or more of the leading commercial exchanges, and stands ready to accept from all comers, bets upon the course of such blackboard prices, each trade being opened at the last quotation then on the blackboard and being closed at the last quotation on the blackboard at the time of closing. A margin is exacted from each customer, and when this is exhausted, according to the blackboard price, the so-called trade is at an end. The keeper takes out of each trade an arbitrary profit, miscalled a commission, which enables him to practically assume the risks incident to the fluctuations of the market, such risk being present for him only to the extent that the so-called purchases of his customers exceeded in the aggregate the so-called sales, or *vice versa*."

It is somewhat remarkable that counsel for the plaintiff should attempt to state that this is the definition of "bucket shop." It is probably such a definition of a bucket shop, as the Board of Trade would seek to have established, for the self-sufficient reason that it is the only definition that will prevent the Board of Trade from being a "bucket shop." The counsel's definition of a "bucket shop" might be interesting, but his difficulty is found in the fact that the statutes of his own state, Illinois, and the statutes of Missouri, have settled the question of what "bucket shops" are. The statute of Illinois provides (see page 27 of our original brief):

"That a 'bucket shop' is a place where there is permitted the

buying or selling of shares of stock, bonds, cotton, grain or other produce, *without any intention of receiving and paying for the property so purchased, or of delivering the property so sold, or the pretended buying or selling where the party does not intend to actually receive the same if purchased or to deliver the same if sold, and the keeping of all such places is hereby prohibited.*"

The statutes of Missouri, upon the subject, pages 28 and 29 of our original brief, are precisely the same. So a "bucket shop" as defined by the statutes is not what counsel for petitioner has stated, but what the statutes of the state define it to be. That is to say, all places which are kept, where is permitted the buying or selling of the character of property aforesaid, without intention on the part of the seller to deliver, or on the part of the purchaser to receive, are defined to be "bucket shops" no matter where they are kept, under what name or who keeps them, whether they be corporations, individuals or firms, or whether they style themselves Boards of Trade of Chicago, New York, or by any other virtuous name. We call attention to this for the reason that counsel for petitioner is attempting to frame a definition of his own, for "bucket shops," so as to let out the big "bucket shop" that he represents.

Petitioner has urgently tried under all occasions and every time that this question has been presented to the courts, to manufacture a self-serving definition for a "bucket shop," and has studiously avoided any statements that would lead the Court to even suspect that its own state of Illinois had defined what a "bucket shop" is.

**DEFENDANT NOT A BUCKET SHOP.**

It may be well here again to state as we have heretofore made plain in our original brief that the Christie Grain & Stock Company is not a "bucket shop," but is a legitimate grain company engaged in legitimate business, and no contention is made in this case that it is or ever was in the bucket shop business.

II.

Under point I of argument in petitioner's brief, he undertakes to argue the question, that even if it be conceded that the petitioner was engaged in the general gambling business, yet this fact would

not avail as a defense, for the reason that equity is not concern with the enforcement of criminal laws, and cites authorities upon this proposition.

But that question is not presented in this case. This is a case wherein the petitioner comes into the Courts of Missouri to enjoin a grain company from using market quotations which are made and produced as a direct result of practices and acts, which are declared to be criminal by the statutes of the state where it produces them, towit: the state of Illinois; and by the statutes of the state where it seeks equity, to-wit: The state of Missouri.

The case does not present the question of the court's attempting to enforce the criminal laws of the State of Illinois. Of course, this could not be done. In other words the courts of Missouri or the United States Courts sitting in the State of Missouri could not try anybody within that jurisdiction for violation of the criminal statutes of Illinois, and this is not a case wherein is presented the question of enforcement of any of the criminal laws of the State of Illinois or elsewhere. It is the negative proposition which says to a party seeking equity, that it must come into court with clean hands, and if the relief which it seeks involves an attempt to preserve to itself certain privileges as against the public elsewhere, and that privilege or right which it seeks to enforce, is itself the direct result of violation of criminal law and iniquitous and criminal in itself, the courts will leave it where it finds it.

We truly concede that equity is not concerned with the general morals of the complainant; but we likewise earnestly assert that equity is concerned with the specific morals of complainant where the particular protection or pretended right sought to be enforced grows out of, is bred from, and is a direct result of the violation of law on complainant's part. And the answer in this case states (pages 25 and 26 of our original brief) that the quotations:

"Which the petitioner seeks to enjoin the grain company from using are quotations which are the result of transactions in the Exchange Hall kept by the complainants, which transactions at said place kept and permitted to be kept by complainants are themselves transactions resulting in the quotations which defendants are

charged with using and which are themselves 'bucket shop' transactions and the result of 'bucket shop' transactions carried on and encouraged and fostered by complainant in violation of the laws of the State of Illinois and of the State of Missouri," etc.

And the evidence in the case, without dispute is, that the quotations in question are the result of deals made and permitted to be made in the Exchange Hall of the complainant with its knowledge and consent, wherein the parties pretending to sell the commodity or pretending to buy the commodity sold, *do not intend* that the same shall ever be delivered upon the sales or received upon the purchases, but settled upon differences before time of delivery arrives.

It is contended by petitioner that it does not violate the "bucket shop" statute of Illinois, because forsooth it is a Commercial Exchange, or Board of Trade, or some other kind of holy institution possessing the characteristics of some imagined immunity, and it undertakes to say that because the Board of Trade was organized in 1859, before the crime of "bucket shopping" was known, and before the legislatures of the various states had undertaken to stop the gambling business, as conducted by boards of trade and others, that therefore the statute ought not to have any application to it, and that inasmuch as its articles of incorporation provided that it might carry on such business as is usually carried on and managed by Boards of Trade or Chambers of Commerce, that therefore when the "bucket shop" statutes were passed, it could not apply to them.

This argument, of course, is based upon the implied admission that the petitioner as a Board of Trade or Chamber of Commerce, was carrying on the gambling business and producing the quotations as a result thereof, and doing a kind of business prohibited by the gambling statutes; but seeking to cover behind the proposition that it ought not to apply to them because they had been gambling before the statute relating to "bucket shopping" was passed.

This argument hardly arises to the dignity of candid thought. It would be a strange construction of the acts of the Legislature to say that because a company had been incorporated, and had stated

in its charter that it expected to carry on legitimate business "and disseminate principles of equity" that it was intended that it might thereafter engage in "bucket shopping" and gambling; and that if the Legislature afterwards attempted to prohibit it, the corporation could plead as a defense that it had been incorporated by the same legislature. If such was the case, then a corporation could engage in violation of the criminal laws of the country, and when confronted with the offense, could answer that it had been incorporated under the laws of the state before the statute was passed.

Or to further illustrate, a corporation might be organized for the purpose of engaging in the business of buying and selling personal property, and then when an act of the Legislature was afterwards passed prohibiting the stealing of horses, it could answer when charged with the offense, that it had a right to steal them, because it had a prior charter permitting it to engage in the handling of personal property.

Counsel in his brief undertakes to advise this Court of the grounds upon which Judge Thompson in the 115 Federal, 574, and Judge Adams in the 121 Federal, 1022, as well as Judge Anderson placed their decisions, in condemning the business of the petitioner and turning it out of court, but a reading of the opinions will give us a fairer view of it, than the excerpts quoted therefrom by counsel.

Counsel further argues in his brief, as he has repeatedly argued, in all this class of cases, that these commercial quotations have a great value for future trade, and cites an article from the Century Magazine, September, 1903, in support of that argument.

In answer to this, we are free to say, that we agree with the counsel for petitioner upon this subject. We agree with him that these quotations made by the Chicago Board of Trade for more than forty years, have been sent out to the public to such an extent, that they have become the guide, as to fluctuations in the market, and that they subserve a valuable purpose; and we might further concede that it is possible even, that "bucket shops" should be permitted throughout the country, and that it might probably be advisable to permit the Board of Trade of Chicago to continue

to violate the statute of the State of Illinois and other states in the making of its quotations as the result of gambling transactions, and it may be possible that these quotations, although the result of gambling transactions, on the floor of this exchange, have been so long continued, and trade conditions have so adjusted themselves with reference to them, that it would be unfortunate that they should be discontinued, and yet this question is wholly beside the case. As long as the policy of the Legislature of the state has been to condemn "bucket shopping" and the keeping of places where "bucket shopping" is permitted, it is not for the courts to say aught. The courts are not concerned with the character of crimes that the Legislature sees fit to create, as long as they fall within the dominion of legislative regulation. The Courts do not make the statutes of any of the states, and however beneficial these quotations may be, yet if they are made as a result of gambling transactions prohibited by the laws of the country, equity will not aid any gambler, or class of gamblers, whether doing business under the name of Boards of Trade or otherwise, to monopolize the iniquitous business. But it is to be further observed that neither the decision of the United States Circuit Court of Appeals, from which this case comes, nor the decision of the various Circuit Courts to the same effect, in any way cut off the right of the Board of Trade to continue its gambling business, nor interfere with the free, untrammeled and unfettered privilege of making the quotations.

We are not asking in this case to enforce the penalty of any laws of the State of Illinois or elsewhere against the petitioner, or seeking to curtail its illegal business, but are rather insisting that others have the right to use these quotations as well as the petitioner itself.

III.

Under point II of the brief of petitioner, it is urged that most of the Trades, whose prices the quotations record, are not gambling transactions. This point we do not desire to travel over again, as we have thoroughly gone over it in our original brief filed in this cause, and have quoted the testimony, citing the pages of the record, which is so conclusive that further argument is unnecessary.

This testimony referred to is testimony of the Board of Trade members themselves, including its president, Mr. Warren. This branch of the subject is covered in our original brief, being found on pages 105 to 158 inclusive.

Counsel for petitioner again urges in his brief here, that what he calls "hedging" transactions, ought to be upheld; but we say, with reference to this class of business, what more particularly appears in the argument upon the subject in our original brief, that they furnish a class of the most clean cut, unvarnished, gambling, of all the transactions on the Board of Trade. His argument that these trades are necessary in order to protect men who actually buy grain, may be all very true, and as we have heretofore said with reference to all this gambling business on the Board of Trade, it may have been continued for such a length of time, and trade has so adjusted itself to it, that it might be better if the "bucket shop" laws of the country were repealed, and these grains buyers permitted to hedge their deals, but the question is not to be solved by the proposition that they may subserve a useful purpose, nor by the fact, if it be a fact, that the country would be better off with this system than without it. That question would be a timely one to argue to the Legislatures of the States, and if it ever comes before the Legislatures for discussion, the dissertation of counsel for petitioner upon that subject may be of value. The Board of Trade of Chicago made a desperate and insistent effort before the legislature of the State of Illinois at its session just closed, to have all "bucket shop" laws of the state repealed, and it may be that it was right in this position, but the law stands; and the courts cannot give it relief by overturning the legislative will.

But in reference to these hedging deals we need suggest nothing further for the reason that counsel for the Board of Trade admits himself that they are gambling transactions where he says on page 27 of his brief:

"It is true that in much of the hedging by millers, and *all of* it done by exporters and packers, there is not, as in the hedging by grain buyers, an intention to deliver, but such hedging is in the nature of insurance against price fluctuation."

And again on the same page he says:

"But not so in the case of the exporter or miller when the former ships a cargo of wheat at San Francisco or New Orleans consigned to Liverpool, and contemporaneously sells on petitioners exchange a like quantity of wheat for future delivery. *He does not contemplate that this cargo will be available for delivery upon his future contract.* Nor can he thus profit by a change in the price of wheat. What he makes upon his future sale he loses upon his cargo and *vice versa.* His hedging is incidental to his export transaction."

So it is the position of the counsel for the Board of Trade here, that while this class of business engaged in by the Board of Trade and from which alone the quotations result, may be in violation of law that they are beneficial to the dealer, and this may be true, but a party who should engage in a plain game of American poker for the purpose of protecting himself in case his real estate should go down in the market, would be none the less gambling.

The question as to whether the purpose of the party may be innocent or not, or as to whether his gambling deal on the Board of Trade protects him against loss in some legitimate transaction, is of no concern. The bucket shop law does not deal with the question upon the theory that bucket shopping depends upon whether a party makes money out of it, or loses money by it. The party who "keeps the place" where transactions of this character are permitted, without any intention on the part of the parties selling to deliver the stock sold or of the party purchasing to receive the property, is engaged in "bucket shopping," and the argument of the counsel for the petitioner is simply an argument which would be properly addressed to a legislative body against enacting or longer containing "bucket shop" legislation.

In this connection, another fact that must be clearly understood at all times is this, that the quotations made on the Board of Trade of Chicago, and which are sent out throughout the country, as market quotations, are simply those quotations resulting from these speculative deals, where neither party to the contract intends or contemplates the delivery of the commodity, and in which trans-

actions they settle the differences between each other at the close of business every day.

*No cash transaction of any kind on the Board of Trade makes any quotations whatever. In other words, there are no quotations made or sent out by the Board of Trade as a part of these market quotations, that emanate from any actual transaction* in grain, stocks or other commodity, but the quotations which the petitioner seeks to enjoin are wholly and alone quotations made as a result of these speculative deals from day to day, hour to hour, and moment to moment, in which neither party to the trade intends or contemplates that delivery is to take place, but on the other hand positively understands and knows that no deliveries are contemplated or to take place. And we make this statement here to the end that there may be no misunderstanding as to what these market quotations emanate from.

As a further evidence of this fact, if there was any doubt about it, the rules and regulations of the Board itself prohibit any of its members from sending out any quotations on any *actual transaction*, and the rule of the Board of Trade introduced in evidence in this case, and known as section 22, page 17 of the rules, in force June 19, 1901, filed as an exhibit and introduced in evidence reads as follows:

"No member shall quote by public or private wire, or otherwise, any price except such as is the first for the commodity immediately following the time indicated on the tape or such as is thus posted on such blackboard. *No member shall be permitted to use prices made in any actual transaction*, as quotations."

So it will be seen that not only does the evidence show that these speculative gambling transactions alone produce these market quotations which the petitioner seeks to protect, but their rules positively prohibit any member from giving out any quotations on any *actual transaction*. On page 26 of the counsel's brief he says:

"In short this hedging has become an essential facility in the present day method of handling the products of the farm between the producer and the consumer," etc., etc.

Here again counsel is arguing as to why this kind of gambling ought not to have been under the ban of bucket shop condemnation, and we quite agree with him that it would be better, perhaps, if all the bucket shop laws of the country were repealed, but he can hardly expect this court to legislate for the country upon this subject.

And again on page 40 of petitioner's brief, he says:

"No thoughtful person, however, considers the commercial exchange as either entirely free from evil or wholly devoid of good. Its opponents concede that it aids legitimate commerce. Its friends admit that it facilitates illegal and harmful speculation. The former think that the evil preponderates over the good and that gambling is the essence, and help to commerce the incident. Its advocates on the contrary, think that the aid it renders to commerce outweighs the evil of the speculation it gives rise to. They thus differ only as to their conception of the ratio of the benefit and injury."

But it is of little interest to discuss this question as to what its friends or opponents think, because the Legislature of the State of Illinois has said *what all of its friends or enemies must think*. The legislature has done the *thinking for them on this subject*. This kind of an argument would be of interest if the counsel was a lobbyist before his state Legislature, but he is, unfortunately for his position, not before that tribunal. Hence it is apparent that the petitioner confesses that the quotations are made as a result of transactions that are in violation of law, and thus lamenting that the Legislature has prohibited their business, and is asking this Court to do that which the Legislature has failed to do for it, to-wit: to repeal the law.

## IV.

Under point III of the argument in petitioner's brief, it suggests that the petitioner ought not to be held responsible for such gambling as is done and permitted on the Board of Trade, or to be deprived of the right to sue to protect its property right in its quotations. This, again, is assuming a position which is wholly unsustained by this record. The evidence clearly sustains the proposition

that practically all of the business of the complainant resulting in these quotations is that class of business known as "bucket shopping," resulting from the pretended sales or pretended purchases, wherein neither the parties selling nor the parties purchasing, contemplated or expected that any deliveries were to be made, but on the contrary, that the whole thing should be washed out by a system of cancellation of trades, through a cleverly concocted device called its "clearing house," which we have carefully examined into in our original brief. And again we invite the Court's attention to the evidence we have collected upon this subject, from pages 105 to 158 inclusive, of our original brief.

It may be here interesting to recall the fact that "bucket shopping" in this country, that is to say that cleverly devised system of speculation which deals in millions and millions of bushels of grain, and millions and millions of dollars of stock each day, and cancels the whole of it at night, by settling the differences based upon the rise and fall of the markets during the day, without delivery, or contemplating the delivery of even the proverbial "thirty cents," was invented alone, and emanated entirely from the Boards of Trade of the country, and particularly from this Board of Trade of the City of Chicago. "Bucket shopping" never was heard of, or known until this gigantic institution invented the scheme; and after they had invented it, other "bucket shops" throughout the country sprung up, and when the children of this parent became so prominent in "bucket shopping" elsewhere, as to interfere with the exclusive privilege of the father then it commenced a well devised scheme of throttling its progeny, and parading its virtue as a great exchange or Board of Trade, and sought to have it believed that it was a holy institution, and had the exclusive sacred right to a monopoly in the "bucket shop" business, and started throughout the country a number of suits of this character, charging other grain institutions with "bucket shopping" and contending that they could not use these quotations for gambling purposes; except, however, with one prominent reservation, never to be overlooked, and which is proven conclusively by the testimony, that "bucket shopping" elsewhere than on the Board of Trade was obnoxious only when such other alleged "bucket shop" failed to send all its deals to the members of this gigantic "bucket shop" at Chicago.

We here affirm that the reading of this testimony demonstrates the coolest and most deliberate scheme and device of the Board of Trade by these persistent injunction suits to force all "bucket shopping" of the country into the Board of Trade of Chicago. He who "bucket shops" through the members of the Board of Trade is not "bucket shopping" at all, as they are pleased to view it, and indeed the president of the Board of Trade, Mr. Warren, upon the stand, has sworn, that no matter what the trade or transaction was, however vicious or openly in violation of the laws, it would be virtuous if it was transacted through the portals of the Exchange Hall of the petitioner.

Counsel for petitioner seems to be afflicted with a severe lament that if the Board of Trade was not permitted to have a monopoly in its gambling business and a monopoly in controlling the quotations as a result of that thereof, that their business would be injured, and that contracts for the future delivery of grain could not be made, and that at all time trading would be prohibited.

This anticipation, however, of petitioner, is again wholly outside the question here. There is no law, decision, or rule of court, or ever will be that prevents a party from making a contract for the future delivery of grain, cotton, or bonds, or from making any contract in which time becomes an essence, and trading for future delivery is in no way prohibited, or prevented by any "bucket shop" laws of any State in the Union. It is that practice which consists in making deals for future delivery without any *intention* of ever carrying them out, or ever in fact *intending a delivery,* but intending settling the difference only in the market price before the time of delivery arrives, that is condemned by bucket shop statutes. It is not the contract for future delivery, or the making of any such contracts that are in any way prohibited or curtailed, but it is the making of such contracts, where the parties at the time of making them, both understood and contemplated that there is to be no delivery at any time, that the "bucket shop" statutes have declared shall not be allowed or permitted. Parties may freely make contracts to deliver grain, stock, or provisions at any future date when made in good faith, and when the time arrives for delivery, if delivery is not made, they must settle the differences, because such

would be the measures of damages in any event; but if they make a contract for future delivery, and intend at the time they make it, to settle it before the day of delivery arrives, and with the understanding that it shall be settled and cancelled and the difference adjusted by a mere balancing of accounts between themselves, then they are brought within the "bucket shop" statutes. It is the keeping of this kind of a place that the statutes of Illinois and Missouri prohibited, and the evidence shows that the petitioner "keeps the place."

But it is somewhat remarkable that counsel for petitioner should be pleading for this right and arguing that the Board of Trade should be permitted to engage in this kind of business, and that it subserves a useful purpose, and then in the next breath argue that that which he seeks to sustain does not in fact exist.

## V.

Counsel for petitioner, under point IV of his brief, argues that the petitioner has property rights in these quotations, and urges upon the Court the terms of the contract between the Board of Trade and the telegraph companies.

We will not in this brief undertake to again argue the invalidity and viciousness of the contracts between the Board of Trade and the telegraph companies, as that has been thoroughly argued in our original brief, and neither will we here undertake to discuss the question that these market quotations, if legal, as petitioner claims they are, are impressed with a *quasi* public right, as decided by the Supreme Court of the State from which they emanate, to-wit, 127 Ill., 153, *Stock Exchange* vs. *The Board of Trade*.

Under point V of the petitioner's brief, he undertakes to answer the argument we have heretofore made in our original brief, that the contract between the telegraph companies and the Board of Trade is in violation of the Sherman Act and the Missouri Anti-Trust statutes, but it can subserve no useful purpose for us to again re-argue that question in this brief, and we refer the Court again to our original brief on this subject, pages 62 to 92 inclusive.

In conclusion, and knowing that the briefs we have heretofore filed are sufficiently lengthy, without adding to this one, we urge that the decision of the Circuit Court of Appeals was correct, and sustained by the undisputed testimony, that the petitioner was in Court, with unclean hands, and had no standing in a court of equity; but we further urge that there were other questions presented to that court which were not decided by it, for the reason that it became unnecessary to do so, in the view taken.

If it shall become necessary for this court to go further into the question than that court went, then there are three other important controlling propositions that must be overcome, before the petitioner would be entitled to relief.

1st. The proposition that in its contracts with the telegraph companies, it is directly engaged in violating the Sherman Act and the Anti-Trust law of Missouri.

2d. That if it be held that it is not coming into Court without unclean hands, and that its quotations are not made in violation of law, then, the petitioner having permitted the public to use its quotations for forty years, and for such time that they have become impressed with a public right, and impressed with the attributes of public property as decided by the Supreme Court of the State of Illinois, it cannot now at this late date, seek to throttle the business of others, built up in reliance on the public quality of the quotations, and cannot now gather in, and monopolize the trade of the United States in its own exchange hall; and

3d. Over and above all of this, the proposition that the complainant, whatever may be its relation to the quotations, have no property right therein that can be asserted against the public.

Respectfully submitted,

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Kansas City, Mo., April 4, 1905.